

SERIAL 05085 RFP MARKETING CONSULTANT

DATE OF LAST REVISION: October 05, 2005 CONTRACT END DATE: October 31, 2008

CONTRACT PERIOD THROUGH OCTOBER 31, 2008

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **MARKETING CONSULTANT**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **October 05, 2005**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

SD/mm
Attach

Copy to: Clerk of the Board
Wes Baysinger, Materials Management
Bill Scalzo, Recreation Services
Mirheta Muslic, Materials Management



CONTRACT PURSUANT TO RFP

SERIAL 05085-RFP

This Contract is entered into this 5TH day of October, 2005 by and between Maricopa County ("County"), a political subdivision of the State of Arizona, and Front Row marketing Services LP, a Pennsylvania Limited Partnership ("Contractor") for the purchase of marketing services.

1.0 TERM

- 1.1 This Contract is for a term of three (3) years, beginning on the 5th day of October, 2005 and ending the 31st day of October, 2008.
- 1.2 The County may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional one (1) year terms up to a maximum of three (3) additional terms. The County shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

2.0 PAYMENT

- 2.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum stated in Final Pricing, attached hereto and incorporated herein as Exhibit "A." Payment shall be made as set forth in Exhibit A.
- 2.2 Payment under this Contract shall be made in the manner provided by law. Invoices shall be prepared and submitted in accordance with the instructions provided on the purchase order. Invoices shall contain the following information: contract number, purchase order number, description of services, price of services, and extended totals.

3.0 DUTIES

- 3.1 The Contractor shall perform all duties stated in the Agreed Scope of Work, attached hereto and incorporated herein as Exhibit "B."
- 3.2 During the Contract term, County shall provide Contractor's personnel with adequate workspace for consultants and such other related facilities as may be required by Contractor to carry out its contractual obligations.

4.0 TERMS & CONDITIONS

4.1 INDEMNIFICATION AND INSURANCE:

4.1.1 INDEMNIFICATION

4.1.2 Indemnification.

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees and costs, relating to this Contract.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

4.1.3 **Abrogation of Arizona Revised Statutes Section 34-226:**

In the event that A.R.S. § 34-226 shall be repealed or held unconstitutional or otherwise invalid by a court of competent jurisdiction, then to the fullest extent permitted by law, **CONTRACTOR** shall defend, indemnify and hold harmless **COUNTY**, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or resulting from **CONTRACTOR'S** work or services. **CONTRACTOR'S** duty to defend, indemnify and hold harmless, **COUNTY**, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, injury to, impairment or destruction of property including loss of use resulting therefrom, caused in whole or in part by any act or omission of **CONTRACTOR**, anyone **CONTRACTOR** directly or indirectly employs or anyone for whose acts **CONTRACTOR** may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including **COUNTY**.

The scope of this indemnification does not extend to the sole negligence of **COUNTY**.

4.1.4 **Insurance Requirements.**

CONTRACTOR, at **CONTRACTOR'S** own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of **COUNTY**. The form of any insurance policies and forms must be acceptable to **COUNTY**.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of **COUNTY**, constitute a material breach of this Contract.

CONTRACTOR'S insurance shall be primary insurance as respects **COUNTY**, and any insurance or self-insurance maintained by **COUNTY** shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect **COUNTY**.

The insurance policies may provide coverage, which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to **COUNTY** under such policies. **CONTRACTOR** shall be solely responsible for the deductible and/or self-insured retention and **COUNTY**, at its option, may require **CONTRACTOR** to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

COUNTY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. **COUNTY** shall not be obligated, however, to review such policies and/or endorsements or to advise **CONTRACTOR** of any deficiencies in such policies and endorsements, and such receipt shall not relieve **CONTRACTOR** from, or be deemed a waiver of

COUNTY'S right to insist on strict fulfillment of **CONTRACTOR'S** obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, shall name **COUNTY**, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against **COUNTY**, its agents, representatives, officers, directors, officials and employees for any claims arising out of **CONTRACTOR'S** work or service.

4.1.4.1 Commercial General Liability. **CONTRACTOR** shall maintain Commercial General Liability Insurance (CGL) and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

The CGL and the commercial umbrella coverage, if any, additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 10 01, and shall include coverage for **CONTRACTOR'S** operations and products.

4.1.4.2 Automobile Liability. **CONTRACTOR** shall maintain Automobile Liability Insurance and, if necessary, Commercial Umbrella Insurance with a combined single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, with respect to **CONTRACTOR'S** vehicles (including owned, hired, non-owned), assigned to or used in the performance of this Contract. If hazardous substances, materials, or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

4.1.4.3 Workers' Compensation. **CONTRACTOR** shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of **CONTRACTOR'S** employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

CONTRACTOR waives all rights against **COUNTY** and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by **CONTRACTOR** pursuant to this agreement.

In case any work is subcontracted, **CONTRACTOR** will require the Subcontractor to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of **CONTRACTOR**.

4.1.5 Certificates of Insurance.

4.1.5.1 Prior to commencing work or services under this Contract, Contractor shall furnish the County with certificates of insurance, or formal endorsements as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.

In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of **CONTRACTOR'S** work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to **COUNTY** fifteen (15) days prior to the expiration date.

4.1.5.2 Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

4.2 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County
Department of Materials Management
Attn: Director of Purchasing
320 West Lincoln Street
Phoenix, Arizona 85003

For Contractor:

Front Row Marketing LP
Attn: Senior Vice President
780 94th Ave. Suite 107
Tampa, Florida 33702

4.3 REQUIREMENTS CONTRACT:

Contractor signifies its understanding and agreement by signing this document, that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made. Contractor shall take no action under this Contract unless specifically requested by County, which shall submit a written notice to Contractor requesting that work be performed.

4.4 TERMINATION:

County may unconditionally terminate this Contract for convenience by providing thirty (30) calendar days advance notice to the Contractor.

County may terminate this Contract if Contractor fails to pay any charge when due or fails to perform or observe any other material term or condition of the Contract, and such failure continues for more than ten (10) days after receipt of written notice of such failure from County, or if Contractor becomes insolvent or generally fails to pay its debts as they mature.

4.5 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

4.6 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

4.7 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

4.8 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Proposal Serial Number and identify the job project.

4.9 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.10 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine copy and make use of, any and all said materials.

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

4.11 AUDIT DISALLOWANCES:

If at any time County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

4.12 VALIDITY:

The invalidity, in whole or in part, of any provision of the Contract shall not void or affect the validity of any other provision of this Contract.

4.13 RIGHTS IN DATA:

The County shall have the use of data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.14 INTEGRATION

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

AUTHORIZED SIGNATURE

PRINTED NAME AND TITLE

ADDRESS

DATE

MARICOPA COUNTY

BY: _____
CHAIRMAN, BOARD OF SUPERVISORS
ATTESTED:

DATE

CLERK OF THE BOARD

DATE

APPROVED AS TO FORM:

MARICOPA COUNTY ATTORNEY

DATE

EXHIBIT A

SERIAL 05085-RFP, COMMODITY CODE P08 95 04, NIGP 91806

PRICING SHEET

CONTRACTOR NAME:	<u>FRONT ROW MARKETING INC.</u>
VENDOR #:	<u>23307491</u>
CONTRACTOR ADDRESS:	<u>780 94TH AVE. SUITE 107</u>
P.O. ADDRESS:	<u>SAME</u>
BIDDER PHONE #:	<u>727-456-1161</u>
BIDDER FAX #:	<u>727-456-1165</u>
COMPANY WEB SITE:	<u>WWW.FRONTROW-MARKETING.COM</u>
COMPANY CONTACT (REP):	<u>JOHN MCDONALD</u>
E-MAIL ADDRESS (REP):	<u>JPM@FRONTROW-MARKETING.COM</u>

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: _____ YES

OTHER GOV'T. AGENCIES MAY USE THIS CONTRACT: _____ YES

PAYMENT TERMS: 1% 30 DAYS NET 31

1.0 FEES:

1.1 FEE FOR PHASE 1		\$92,000.00
	<u>1.1.1</u> REFUND AMOUNT TO BE DEDUCTED FROM FRONT ROWS ANNUAL COMMISSIONS OVER 5 YEARS, \$10,000.00 PER YEAR.	\$50,000.00
	NET PHASE 1 FEE	\$42,000.00
1.2 PROPOSED FEE FOR PHASE 2		
1.2.1 SET FEE		\$ -
1.2.2 PERCENTAGE OF REVENUE BASED ON INDIVIDUAL CONTRACT REVENUE ALL CONTRACTS		10%

COMMISSION WILL BE PAID BASED ON AND LIMITED TO THE FIRST FIVE (5) YEARS OF REVENUE FOR EACH INDIVIDUAL CONTRACT. THE COMMISSION WILL BE PAID OUT IN EQUAL PAYMENTS OVER A FIVE (5) YEAR PERIOD STARTING FROM THE CONTRACT DATE OF EACH INDIVIDUAL CONTRACT.

TRAVEL EXPENSES ARE NOT TO EXCEED \$12,000.00 AND MUST BE PRE-APPROVED BY THE COUNTY. CONTRACTOR SHALL FOLLOW THE COUNTY'S TRAVEL POLICY.

PAYMENT SHALL BE AS FOLLOWS:	WORK MONTH	PAYMENT MONTH	PAYMENT AMOUNT
	NOVEMBER	DECEMBER	\$10,000.00
	DECEMBER	JANUARY	\$10,000.00
	JANUARY	FEBRUARY	\$10,000.00
	FEBRUARY	MARCH	\$10,000.00
	MARCH	APRIL	\$10,000.00
	APRIL	MAY	\$10,000.00
	MAY	JUNE	\$10,000.00
	JUNE	JULY	\$10,000.00

Exhibit B

1.0 **INTENT:**

The intent of this contract is to perform the following:

- 1.1.1 Phase I, the contractor will identify all potential marketing opportunities and develop a portfolio of potential marketing opportunities. Upon receipt of the portfolio, the County will evaluate this information and decide which opportunities it intends to pursue.
- 1.1.2 Phase II Scope of Work will begin only if the County makes a decision to approve specific items contained in the portfolio of opportunities presented by the contractor. These opportunities include to leveraging assets for the purpose of entering into marketing partnership with vendors, in areas such as building, facility and park commercial name rights, pouring and snack vending rights, fleet sponsors, merchandise branding and other opportunities identified by the contractor.
- 1.1.3 Maricopa County reserves the unilateral right to approve the specific areas it will consider for commercial marketing.

2.0 **SCOPE OF WORK:**

- 2.1 Phase I: The contractor will be expected to perform the following tasks:
 - 2.1.1 Development of a set of policies to guide the work of the County and the consultant in pursuit of local government marketing sponsorships and commercial naming rights opportunities.
 - 2.1.2 Evaluate and value County assets, facilities, operations, contracts and purchases to identify commercial marketing opportunities.
 - 2.1.3 Develop a portfolio of identified marketing opportunities ranked according to potential revenue or potential for offsetting County expenditures to be presented to the County for approval of the areas to pursue agreements.
 - 2.1.4 Outline the strategy and type of commercial enterprises that will be targeted for marketing approved items.
 - 2.1.5 Develop required management plans and sponsorship programs.
 - 2.1.6 Provide schedules for implementation of marketing opportunities contained in the portfolio.
- 2.2 Phase II: The contractor upon receiving the list of approved items will perform the following tasks:
 - 2.2.1 Create marketing program and supporting materials that outline the goals of the County's programs and emphasize the potential value to corporate partners.
 - 2.2.2 Develop a targeted list of potential vendors for each approved opportunity, which will be used to pursue marketing agreements.
 - 2.2.3 In conjunction with or at the direction of the County, meet with the targeted partnership companies to explain the goals, policies, and objectives of the County's program and to gather information on those companies' marketing programs, goals and objectives.
 - 2.2.4 Arrange follow-up meetings and provide additional information as necessary to pursue prospective corporate partnerships.

- 2.2.5 At the County's direction and assistance, negotiated partnership agreements, financial and programmatic arrangements and terms with prospective partnership companies.
- 2.2.6 Assist the County in reviewing proposals and in drafting partnership agreements.
- 2.2.7 Assist County staff in presenting proposed partnership agreements to Board of Supervisors, County management, and the public.
- 2.2.8 In addition to revenue guarantees, the County will consider in kind agreements that offset County expenditures.
- 2.2.9 Maricopa County shall retain all rights on approving marketing agreements presented for consideration by the contractor.
- 2.3 Contractor shall not represent any future Public Entities in Arizona without the written permission of the County.
- 2.4 USAGE REPORT:

The Contractor shall furnish the County a quarterly usage report delineating their activity governed by the Contract. The County shall approve the format of the report.
- 2.5 TAX:

No tax shall be levied against labor.
- 2.6 DELIVERY:

It shall be the Contractor's responsibility to meet the County's delivery requirements.

FRONT ROW MARKETING SERVICES LP, 780 94TH AVENUE N. #107, ST. PETERSBURG, FL 33702

PRICING SHEET P089504/B0602807/NIGP 91806

Terms:	NET 30
Vendor Number:	W000005788 X
Telephone Number:	727/456-1161
Fax Number:	727/456-1165
Contact Person:	John McDonald
E-mail Address:	jpm@frontrow-marketing.com
Company Web Site:	www.frontrow-marketing.com
Certificates of Insurance	Required
Contract Period:	To cover the period ending October 31, 2008.